



**ENTERED
10/02/2012**

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

IN RE)	
)	
ALBERT MORRIS,)	CASE NO. 12-35217-H3-7
)	
Debtor,)	
)	
ALBERT MORRIS,)	
)	
Plaintiff,)	
v.)	ADV. NO. 12-3308
)	
AMERICAN HOME MORTGAGE)	
SERVICING, INC.,)	
)	
Defendant.)	
)	

MEMORANDUM OPINION

The court has considered the "Motion of Homeward Residential, Inc. to Dismiss this Lawsuit" (Docket No. 6). The motion has been treated as a motion for summary judgment, pursuant to Rule 12(d) of the Federal Rules of Civil Procedure, as made applicable by Bankruptcy Rule 7012. The court previously set October 1, 2012 as the deadline to present all material pertinent to the instant motion. (Docket No. 11). The following are the Findings of Fact and Conclusions of Law of the court. A separate Judgment will be entered granting the instant motion. To the extent any of the Findings of Fact are considered Conclusions of Law, they are adopted as such. To the extent any

of the Conclusions of Law are considered Findings of Fact, they are adopted as such.

Findings of Fact

Albert Morris ("Debtor") filed the voluntary petition in the instant bankruptcy case, Case No. 12-35217-H3-7, under Chapter 7 of the Bankruptcy Code on July 9, 2012.

The court takes judicial notice of the docket sheet and the electronic file in C.A. No. H-09-3795, a civil action styled Albert Morris v. American Home Mortgage Servicing, Inc., et al., filed in the United States District Court for the Southern District of Texas.

In the complaint in C.A. No. 09-3795, Debtor asserted that American Home Mortgage Servicing, Inc. ("Defendant") wrongfully foreclosed on Debtor's real property on March 3, 2009, based on Debtor's assertion that Defendant lacked standing to foreclose. Debtor also asserted a claim under the Fair Debt Collection Practices Act, alleging that Defendant has engaged in a pattern and practice of filing foreclosure actions in Texas without the requisite authority. (Docket No. 1, C.A. No. 09-3795).

The complaint in C.A. No. 09-3795 was dismissed by the United States District Court for the Southern District of Texas, by order entered on September 22, 2010, for failure to state a

claim upon which relief could be granted. (Docket Nos. 23, 24, C.A. No. 09-3795).

Debtor appealed the judgment of the United States District Court for the Southern District of Texas. The Fifth Circuit Court of Appeals affirmed the judgment of the United States District Court for the Southern District of Texas, and issued its mandate, by order entered on December 12, 2011. (Docket No. 37, C.A. No. 09-3795).

In the complaint in the instant adversary proceeding, Debtor asserts that Defendant wrongfully foreclosed on Debtor's real property on March 3, 2009, based on Debtor's assertion that Defendant lacked standing to foreclose. Debtor also asserts a claim under the Fair Debt Collection Practices Act, alleging that Defendant has engaged in a pattern and practice of filing foreclosure actions in Texas without the requisite authority. (Docket No. 1).

Conclusions of Law

Res judicata applies only if four conditions are satisfied. First, the parties in a later action must be identical to (or at least be in privity with) the parties in a prior action. Second, the judgment in the prior action must have been rendered by a court of competent jurisdiction. Third, the prior action must have concluded with a final judgment on the merits. Fourth, the same claim or cause of action must be

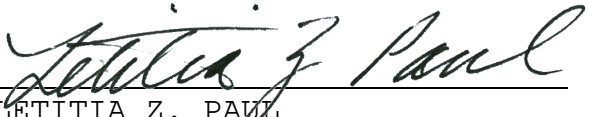
involved in both suits. United States v. Shanbaum, 10 F.3d 305 (5th Cir. 1994).

Debtor and Defendant were both parties to C.A. No. 09-3795 in the United States District Court for the Southern District of Texas. The United States District Court for the Southern District of Texas was a court of competent jurisdiction. The dismissal of C.A. 09-3795 was a final judgment on the merits. Dismissal for failure to state a claim upon which relief can be granted is a judgment on the merits. Federated Dep't Stores, Inc. v. Moitie, 452 U.S. 394, 399 n. 3, 101 S.Ct. 2424, 69 L.Ed.2d 103 (1981). The same claim or cause of action was involved in both suits: Debtor's allegations of wrongful foreclosure and claim under the Fair Debt Collection Practices Act.

The court concludes that Debtor's continued litigation of the above captioned adversary proceeding is barred by res judicata.

Based on the foregoing, a separate Judgment will be entered dismissing the above captioned adversary proceeding.

Signed at Houston, Texas on October 2, 2012.


LETITIA Z. PAUL
UNITED STATES BANKRUPTCY JUDGE